

ESTTA Tracking number: **ESTTA235607**Filing date: **09/09/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

### Petitioner Information

Name	NextWave Broadband Inc.		
Entity	Corporation	Citizenship	Delaware
Address	12670 High Bluff Drive San Diego, CA 92130 UNITED STATES		
Attorney information	Todd S. Bontemps Cooley Godward Kronish LLP 5 Palo Alto Square 3000 El Camino Real Palo Alto, CA 94306 UNITED STATES trademarks@cooley.com Phone:6508435000		

### Registrations Subject to Cancellation

Registration No	3280262	Registration date	08/14/2007
Registrant	NEXWAVE SOLUTIONS, SOCIETE ANONYME LE SERANTUE/BA.A. 130-140 QUAITLORA TRISTAN MONTPELLIER, 34070 FRANCE		

### Goods/Services Subject to Cancellation

Class 009. First Use: 2006/00/00 First Use In Commerce: 2006/00/00 All goods and services in the class are cancelled, namely: blank magnetic data carriers; blank discs for computers; optical discs; blank hard computer discs; blank floppy computer discs; computers; computer peripherals, namely, computer monitors, computer keyboards, computer mice, computer consoles, computer printers; computer programs for time sharing services and providing access to a global computer network; computer game software; computer game joysticks; computer game equipment containing memory devices, namely, discs, for use with a television receiver
Class 042. First Use: 2006/00/00 First Use In Commerce: 2006/00/00 All goods and services in the class are cancelled, namely: computer time sharing services; engineering in the fields of electronic, audio-visual, and data processing technologies

### Grounds for Cancellation

Abandonment	Trademark Act section 14		
Registration No	2927112	Registration date	02/22/2005
International Registration No.	NONE	International Registration Date	NONE
Registrant	NEXWAVE SOLUTIONS, SOCIETE ANONYME LE SERANTUE/ BA.A. 130-140 QUAITLORA TRISTAN MONTPELLIER, 34070 FRANCE		

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## Goods/Services Subject to Cancellation

Class 009.

All goods and services in the class are cancelled, namely: computer software, namely, component-based operating systems software and embedded operating system software

Class 038.

All goods and services in the class are cancelled, namely: telecommunication services, namely, electronic transmission of messages via global computer networks

Class 042.

All goods and services in the class are cancelled, namely: computer software design for others

## Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	Cancellation.pdf ( 12 pages )(265107 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/TSB5/
Name	Todd S. Bontemps
Date	09/09/2008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the matter of Registration:**

Registration Nos.: 2,927,112 and 3,280,262  
Registered: February 22, 2005 and August 14, 2007, respectively.  
Registrant: Nexwave Solutions  
Mark: NEXWAVE

NEXTWAVE BROADBAND INC.,	)	
	)	
Petitioner,	)	
	)	Cancellation No.
v.	)	
	)	
NEXWAVE SOLUTIONS, SA	)	
	)	
Registrant.	)	
	)	

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Trademark Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**PETITION FOR CANCELLATION**

NextWave Broadband Inc., a Delaware corporation having its principal place of business at 12670 High Bluff Drive, San Diego, California 92130 (hereinafter “Petitioner”), believes that

it will be damaged by the continued registration of the marks shown in Registration Nos. 2,927,112 and 3,280,262, registered on February 22, 2005 and August 14, 2007, respectively, for NEXWAVE with the United States Patent and Trademark Office (hereinafter “USPTO”) by Nexwave Solutions, SA (hereinafter “Registrant”), and hereby petitions to cancel the same under Section 14 of the Trademark Act of 1947, 15 U.S.C. § 1064.

As grounds for this Petition, Petitioner alleges that:

1. Petitioner is a Delaware corporation, having its principal place of business at 12670 High Bluff Drive, San Diego, California 92130.
2. On information and belief, Registrant was a French corporation, formerly doing business at 130-140 Quaitlora Tristan, Le Serantue/ BA.A., Montpellier, 34070, France.
3. Petitioner develops wireless telecommunications technologies and WiMAX/Wi-Fi chipsets for mobile broadband communication.
4. Petitioner is the owner of U.S. Trademark Application No. 78/843,098 for the mark NEXTWAVE WIRELESS for and in connection with “integrated circuits for use in the wireless transporting, receiving or aggregating voice, data, and video; computer hardware and computer networks, namely modems, modem cards, routers, wireless handsets, access points, wireless cards, base stations, network controllers, and antennas containing said integrated circuits for wireless telecommunications; wireless telecommunications transmitters and receivers” in International Class 009, “telecommunications reseller services, namely telecommunications air time brokerage services,” in International Class 036, “wireless broadband communication services” in International Class 038, and “technical consultation in the field of telecommunications; design, implementation, research and development of wireless telecommunication systems, namely wireless networks, base stations, network controllers,

antennas, network management software, wireless cards, modems, modem cards, routers, wireless handsets and access points for wireless telephony and data services” in International Class 042.

5. Petitioner is the owner of U.S. Trademark Application No. 78/843,093 for the mark NEXTWAVE BROADBAND for and in connection with “integrated circuits for use in the wireless transporting, receiving or aggregating voice, data, and video; computer hardware and computer networks, namely modems, modem cards, routers, wireless handsets, access points, wireless cards, base stations, network controllers, and antennas containing said integrated circuits for wireless telecommunications; wireless telecommunications transmitters and receivers” in International Class 009, “telecommunications reseller services, namely telecommunications air time brokerage services,” in International Class 036, “wireless broadband communication services” in International Class 038, and “technical consultation in the field of telecommunications; design, implementation, research and development of wireless telecommunication systems, namely wireless networks, base stations, network controllers, antennas, network management software, wireless cards, modems, modem cards, routers, wireless handsets and access points for wireless telephony and data services” in International Class 042.

6. The USPTO has issued Office Actions against Petitioner’s Application No. 78/843,098 (NEXTWAVE WIRELESS) and Application No. 78/843,093 (NEXTWAVE BROADBAND) based in part on an alleged likelihood of confusion under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d), with Registration Nos. 2,927,112 and 3,280,262.

7. Registration No. 2,927,112 was issued on February 22, 2005 to Registrant for the mark NEXWAVE for in and connection with “computer software, namely, component-based

operating system software and embedded operating system software” in International Class 009 and “computer software design for others” in International Class 042.

8. Registration No. 3,280,262 was issued August 14, 2007 to Registrant for the mark NEXWAVE for and in connection with “blank magnetic data carriers; blank discs for computers; optical disks; blank hard computer discs; blank floppy computer discs; computers; computer peripherals, namely, computer monitors, computer keyboards, computer mice, computer consoles, computer printers; computer programs for time sharing services and providing access to a global computer network; computer game software; computer game joysticks; computer game equipment containing memory devices, namely, discs, for use with a television receiver” in International Class 009 and “computer time sharing services; engineering in the fields of electronic, audio-visual, and data processing technologies” in International Class 042.

9. As set forth in detail below, on information and belief, Registration Nos. 2,927,112 and 3,280,262 are no longer used in commerce and have been abandoned based on non-use with an intent not to resume. The continued registration of Registration Nos. 2,927,112 and 3,280,262 are causing actual harm to Petitioner as it is blocking registration of Petitioner’s application Serial Nos. 78/843,093 and 78/843,098.

### **CLAIM FOR RELIEF**

#### **Registration Nos. 2,927,112 and 3,280,262 Have Been Abandoned**

10. Petitioner repeats and realleges each and every allegation set forth in Paragraphs 1 through 9 as if fully set forth herein.

11. Registration Nos. 2,927,112 and 3,280,262 (NEXWAVE) may be cancelled under Section 14 of the Trademark Act of 1964, 15 U.S.C. § 1064(3).

12. Section 45 of the Trademark Act of 1946, 15 U.S.C. § 1127 provides that a mark

shall be deemed to be “abandoned” (1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances....“Use” of a mark means the bona fide use of such mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.”

13. On information and belief, Registrant Nexwave Solutions no longer exists, as Registrant has filed for bankruptcy in the courts of France and is currently in liquidation. (*See* Exhibit A.)

14. On information and belief, Registrant’s use of the mark covered by Registration Nos. 2,927,112 and 3,280,262 has been discontinued as a result of Registrant discontinuing all of its former commercial activities, including discontinuing its former website located at <http://www.nexwave-solutions.com>, and ceasing to be a corporate entity. (*See* Exhibit B, printout of “no active server” page resulting from nexwave-solutions.com URL, and January 2008 archive homepage from nexwave.solutions.com.) Since Registrant no longer exists, Registrant’s intent not to resume use of its former mark may be reasonably inferred.

15. No assignments of Registration Nos. 2,927,112 or 3,280,262 have been recorded with the USPTO.

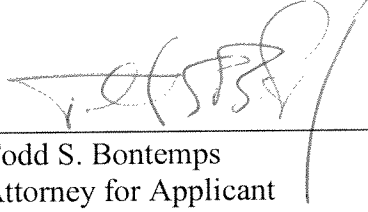
16. Because Registrant no longer exists and has permanently ceased use of its NEXWAVE mark, Registration Nos. 2,927,112 and 3,280,262 have been abandoned by Registrant and should be cancelled.

17. Petitioner is and will continue to be harmed by the continued registration of the mark shown in Registration Nos. 2,927,112 and 3,280,262 because the USPTO has refused registration of Petitioner's applications, based in part on the existence of Registration Nos. 2,927,112 and 3,280,262.

Respectfully submitted,  
COOLEY GODWARD KRONISH LLP

Date: September 9, 2008

By: \_\_\_\_\_

  
Todd S. Bontemps  
Attorney for Applicant  
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3000 El Camino Real  
Palo Alto, CA 94306-2155  
Telephone: (650) 843-5000  
Fax: (650) 857-0663  
Email: [trademarks@cooley.com](mailto:trademarks@cooley.com)




### CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2008, I mailed the foregoing **PETITION FOR CANCELLATION and attached Exhibits A and B** regarding *NextWave Broadband Inc. v. NexWave Solutions, SA*, to Counsel of record for Registrant and Registrant by depositing a true and correct copy of the same with the United States Postal Service, Air Mail, postage prepaid, in an envelope addressed to:

John S. Egbert, Esq.  
Egbert Law Offices  
412 Main Street, Fl. 7  
Houston, TX 77002

Nexwave Solutions, Societe Anonyme  
Le Serantue/BA.A. 130-140 Quaitlora Tristan  
Montpellier 34070  
FRANCE

Date: September 9, 2008

  
Cheryll Dung

# EXHIBIT A



Mise à jour le 17.06.2008

identifiant

\*\*\*\*\*

connexion permanente

Panier Mot de passe oublié?

## NEXWAVE SOLUTIONS

RCS Montpellier B 417 762 853

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Acheter les comptes, les statuts de cette entreprise

☐ Recherche d'entreprise

☐ Recherche d'établissement

☐ Recherche de marque

☐ Analyse de solvabilité

☐ Assurez votre créance

☐ Modèles (lettres & contrats)

☐ Cartographie des dirigeants

☐ Entreprises par département

☐ Mode d'emploi

☐ Comment commander ?

☐ Glossaire termes financiers

☐ Contact

**Achat de documents**  
Comptes bilans statuts

**Assurer une créance**  
de cette entreprise

**Veille entreprise**  
Surveiller la société

**Cartographie Premium**  
Réseau entre les dirigeants

**Analyses de solvabilité**  
Score, Diag, Enquêtes BEIC

Résumé

Identité complète

9 Bilans gratuits



Commentaires

### Décision de justice

Depuis le 11-04 2008

Liquidation judiciaire

Liquidateur MARION LUC

7 Rue Andre Michel

34000 MONTPELLIER

Depuis le 03-03-2008

Redressement judiciaire

Mandataire judiciaire MARION LUC

7 Rue Andre Michel

34000 MONTPELLIER

Administrateur judiciaire FABRE OLIVIER

7 Rue Ecole de Medecine

34000 MONTPELLIER

☐ Achetez les documents liés à cette entreprise


Acheter les comptes, les statuts de cette entreprise



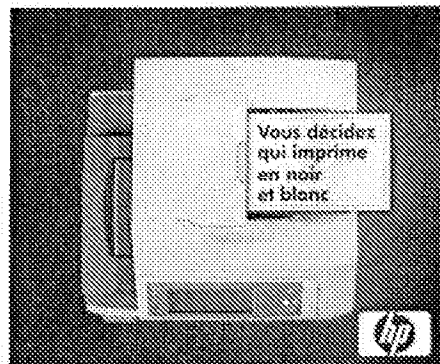
Notes &amp; Mises à jour



Impression

<a href="#">Bilan + compte de résultat</a>	3,10 € HT
<a href="#">Comptes complets (avec annexes, rapports...)</a>	13,90 € HT
<a href="#">Statuts (et actes modificatifs)</a>	6,50 € HT
<a href="#">Annonces BODACC</a>	0,80 € HT
<a href="#">Enquête de solvabilité BEIC</a>	61 à 380 € HT
<a href="#">Diagnostic financier</a>	24,90 € HT
<a href="#">Score AFDCC</a>	9,90 € HT
<a href="#">Veille entreprise</a>	Gratuit

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# EXHIBIT B

SEPT 2008



## The page cannot be displayed

The page you are looking for is currently unavailable. The Web site might be experiencing technical difficulties, or you may need to adjust your browser settings.




To attempt fixing network connectivity problems, click **Tools**, and then click "**Diagnose Connection Problems...**"

Other options to try:

- Click the Refresh button, or try again later.
- If you typed the page address in the Address bar, make sure that it is spelled correctly.
- To check your connection settings, click the **Tools** menu, and then click Internet Options. On the **Connections** tab, click **Settings**. The settings should match those provided by your local area network (LAN) administrator or Internet service provider (ISP).
- See if your Internet connection settings are being detected. You can set Microsoft Windows to examine your network and automatically discover network connection settings (if your network administrator has enabled this setting).
  1. Click the **Tools** menu, and then click **Internet Options**.
  2. On the **Connections** tab, click **LAN Settings**.
  3. Select **Automatically detect settings**, and then click **OK**.
- Some sites require 128-bit connection security. Click the **Help** menu and then click **About Internet Explorer** to determine what strength security you have installed.
- If you are trying to reach a secure site, make sure your Security settings can support it. Click the **Tools** menu, and then click **Internet Options**. On the Advanced tab, scroll to the Security section and check settings for SSL 2.0, SSL 3.0, TLS 1.0, PCT 1.0.
- Click the Back button to try another link.

Cannot find server or DNS Error  
Internet Explorer

CU  
Contact Us

- NexWave  
 **Dempa**  
 Nov 2  
 (Jai

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